

Amendment
Serial No. 10/756,418
Attorney Docket No. 021547A

REMARKS

Claims 1-17 are pending in the present application and are rejected. Claims 1 is herein amended.

Applicant's Response to Double Patenting Rejections

Claims 1-8 were provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 2-8 of co-pending application number 10/305,391. The Office Action states that although the claims are not identical, they are not patentably distinct from each other.

In response, Applicant herewith files a Terminal Disclaimer.

Applicant's Response to Claim Rejections under 35 U.S.C. §102

Claims 1-8 were rejected under 35 U.S.C. §102(b) as being anticipated by Ladyjensky (U.S. Patent No. 5,370,828).

It is the position of the Office Action that **Ladyjensky** teaches a chemiluminescent assembly comprising a flexible container and an approximately cylindrical synthetic resin ampoule. Although **Ladyjensky** teaches that its chemiluminescent devices are intended to be separated by cutting, the Office Action is applying the pre-cut product of **Ladyjensky** as teaching the claimed invention.

In response, Applicant herein amends independent claim 1 to emphasize the "free-floating" aspect of the ampoule 2 of the present invention. That is, the ampoule 2 of **Ladyjensky**

Amendment
Serial No. 10/756,418
Attorney Docket No. 021547A

is not free-floating, but is fixed within its container 1. Thus, Applicant herein amends claim 1 to recite “an approximately cylindrical synthetic-resin ampoule movably contained in said flexible container.” Applicant respectfully submits that this amendment clearly distinguishes over the broad interpretation of **Ladyjensky** as used by the Office Action. Favorable reconsideration is respectfully requested.

Applicant’s Response to Claim Rejections under 35 U.S.C. §103

Claims 6 and 7 were rejected under 35 U.S.C. §103(a) as being unpatentable over Ladyjensky in view of Noel (U.S. Patent No. 6,021,595).

It is the position of the Office Action that **Ladyjensky** discloses the invention as claimed, with the exception of disclosing a hole or hook of the container. The Office Action relies on **Noel** to provide this teaching. In response, Applicant respectfully submits that claims 6 and 7 are patentable due to their dependency on amended claim 1, which Applicant submits is patentable for the reasons discussed above. Applicant respectfully traverses the rejection.

Claims 9-11 were rejected under 35 U.S.C. §103(a) as being unpatentable over Ladyjensky in view of Blersch (U.S. Patent No. 6,903,262).

It is the position of the Office Action that **Ladyjensky** teaches the invention as claimed with the exception of a plurality of pinhole-shaped apertures. The Office Action relies on **Blersch** to provide this teaching. The Office Action argues that **Blersch** discloses “forming a

Amendment
Serial No. 10/756,418
Attorney Docket No. 021547A

plurality of pinhole-shaped apertures for the braking line.” It is noted that none of claims 9-11 use refer to a “braking line.”

Ladyjensky discloses a chemiluminescent lighting element having V-shaped serrations 5 formed in the inner tube 2. This inner tube 2 contains a first liquid 4 and is disposed within outer tube 1 and liquid 3. **Blersch** discloses a shielding element for electric components of an electronic circuit. **Blersch** discloses a printed circuit board 13 with electronic components 25 disposed thereon. These electronic components are covered by cover 12, which acts as an electromagnetic shield. See column 1, lines 51 to 59. According to Figure 6, this cover 12 contains a hole 27 and a plug 28.

In response, Applicant respectfully submits that there is no suggestion or motivation in the art to combine the references. **Ladyjensky** contains no suggestion or disclosure of substituting pinhole-shaped apertures for the V-shaped serrations. Further, **Blersch** contains no suggestion or motivation to apply the teaching of a hole in a cover 12, which acts as an electromagnetic shield, to another apparatus. Thus, one having ordinary skill in the art would not have been motivated to combine the teachings of **Ladyjensky** with the teachings of **Blersch**.

Additionally, Applicant submits that the rejection is based on an impermissible combination of non-analogous art. **Ladyjensky** is directed at a chemiluminescent module, while **Blersch** is directed at a device for electromagnetic shielding.

The determination that a reference is from a nonanalogous art is therefore twofold. First, we decide if the reference is within the field of the inventor's endeavor. If it is not, we proceed to determine whether the reference is reasonably pertinent to the particular problem with which the inventor was involved. *In re Wood*, 599 F.2d 1032, 202 USPQ 171 (CCPA 1979).

Amendment
Serial No. 10/756,418
Attorney Docket No. 021547A

First, an electromagnetic shielding device is clearly not within the field of the inventor's endeavor, which is chemiluminescent devices. Secondly, the reference is not pertinent to the problem with which the inventor was involved. That is, the efficient mixing of chemically active fluids in order to create a chemiluminescent effect. **Blersch** discloses that the hole 27 is utilized in order to aid in the tearing open of the cover 12. See for instance, column 3, lines 1-17 and column 4, line 57 to column 5, line 4. This tearing open has no relevance to the mixing of chemically active liquids.

In summary, Applicant respectfully submits that there is no suggestion or motivation in the art to combine the teachings of **Ladyjensky** with the teachings of **Blersch**. Furthermore, Applicant submits that these references are nonanalogous art and therefore should not be combined. Applicant respectfully traverses the rejection.

Claims 12-17

Claims 12-17 were added in the Preliminary Amendment filed on January 14, 2004. However, these claims were apparently not examined in this Office Action. Applicant respectfully requests that claims 12-17 be examined in the next Office Action.

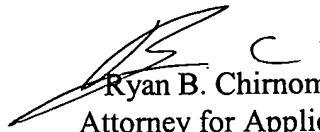
For at least the foregoing reasons, the claimed invention distinguishes over the cited art and defines patentable subject matter. Favorable reconsideration is earnestly solicited.

Amendment
Serial No. 10/756,418
Attorney Docket No. 021547A

Should the Examiner deem that any further action by applicants would be desirable to place the application in condition for allowance, the Examiner is encouraged to telephone applicants' undersigned agent.

If this paper is not timely filed, Applicants respectfully petition for an appropriate extension of time. The fees for such an extension or any other fees that may be due with respect to this paper may be charged to Deposit Account No. 50-2866.

Respectfully submitted,
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RBC/jl
Enclosures: Terminal Disclaimer
Check for \$310.00 (\$130.00+ \$180.00)